

IN THE MAGISTRATES' COURT OF VICTORIA
AT MELBOURNE

No. A11978450

Between:

SHARON KERRISON

Informant

and

SIMON ARTZ

Accused

AFFIDAVIT OF COMMISSIONER NEGUS

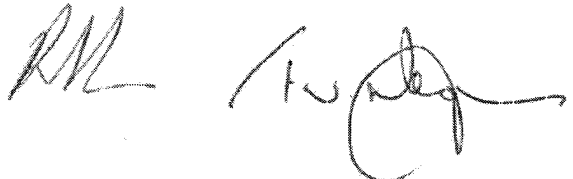
Date sworn: September 2011
Name of deponent: Tony William Negus

Prepared by:
Australian Government Solicitor
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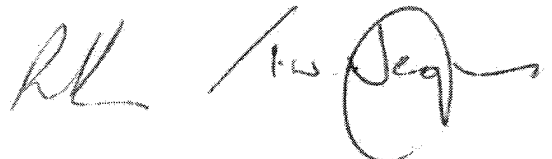
Solicitor's Code: 9342
DX 50 MELBOURNE
Contact: Jeff Cranston
Tel: (03) 9242 1367
Fax: (03) 9242 1496
Ref. 11045923

I, Tony William Negus, of Australian Federal Police Headquarters, 47 Kings Avenue, Barton, Australian Capital Territory, police officer, MAKE OATH AND SAY as follows:-

- 1 I am the Commissioner of the Australian Federal Police (AFP) and am responsible for the national management and control of the AFP. I am stationed in the AFP's National Headquarters in Canberra. I make this affidavit from my own knowledge save where otherwise indicated.
- 2 I have been a member of the AFP for 29 years. During this time, I have gained extensive experience in criminal investigations relating to a broad range of matters both in Australia and overseas, as well as in managing and directing a national police organisation.
- 3 I am informed by Jeff Cranston, the solicitor from the Australian Government Solicitor (AGS) who is acting for the AFP in this proceeding, and I verily believe, as follows:-



- (a) the committal hearing in this proceeding has been listed to commence on 2 November 2011; and
 - (b) the matter has also been listed for mention on 3 October 2011 to deal with any outstanding pre-hearing issues relating to the production or inspection of documents.
4. I am one of the witnesses whom the prosecution proposes to call at the committal hearing.
5. I swore an affidavit on 27 January 2010 (**the earlier Affidavit**) in regard to my relevant involvement in the matter. To the best of my knowledge, the earlier Affidavit forms part of the hand-up brief and has previously been provided to the Accused.
6. I am aware that in proceedings such as this it is common for representatives of the media to seek access to the hand-up brief at or prior to the commencement of the committal. With this in mind, I have reviewed the contents of the earlier Affidavit and the circumstances in which it was made for the purposes of deciding whether the AFP ought to make application for an order under s. 126 of the *Magistrates' Court Act 1989* in respect of publication of the contents of the earlier Affidavit in the media or any parts thereof.
7. I have formed the view that it is appropriate to apply for an order suppressing publication of paragraphs 26 to 31 (inclusive) of the earlier Affidavit and the information contained in them. Those paragraphs deal with discussions that I had with the Editor of *The Australian*, Paul Whittaker, who in my earlier affidavit was incorrectly referred to as Neil Whittaker. My grounds for adopting this position are as follows:-
- (a) The earlier Affidavit was originally produced for a joint inquiry being conducted by the Australian Commission for Law Enforcement Integrity (ACLEI) and the Office of Police Integrity (OPI). It was my expectation when I made that affidavit that a certain degree of confidentiality would attach to the document - it was not made with a public hearing or publication in mind. This is particularly the case in regard to the reported conversations with Mr Whittaker set out in paragraphs 26 to 31.
 - (b) Maintaining confidentiality is essential in order for the AFP to effectively carry out its functions as a law enforcement agency. For example, where the AFP has



received information from a confidential source, it is necessary to protect that source and avoid the disclosure of the person's identity. Failure to do so could result in the person concerned being harmed or killed, and also lead to the perception that the AFP as an organisation could not properly protect such sources.

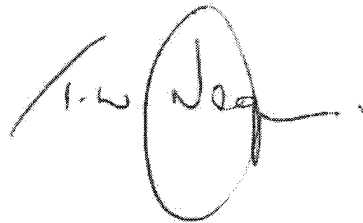
- (c) In my experience, confidential (and candid) communications between the AFP and media organisations are necessary in order to maintain a level of trust and cooperation. Such a relationship with the media enables the AFP to more effectively carry out its functions as a law enforcement agency. From time to time, for example, the AFP receives valuable information relating to its operations from media personnel on a confidential basis. The AFP is very concerned to protect its confidential sources within the media along with its other confidential sources, as indicated above. Moreover, situations may arise where the AFP needs to secure the cooperation of media organisations in the course of its on-going operations in order to prevent premature publication of information that would be detrimental to those operations. The present case provides a good example. Cooperation with the media in any given instance can best be achieved with an appropriate level of mutual trust and cooperation between such organisations and the AFP.
- (d) In the context of counter-terrorism operations in particular, the AFP must be able to conduct frank and productive confidential discussions with media organisations and others. Serious consequences might flow from an inability to do so. It may endanger the national security of Australia if the AFP and the media in certain circumstances were unable to candidly discuss counter-terrorism issues. Again, the present case provides a good example.
- (e) I am further informed by Mr Cranston of AGS, and I verily believe, that the solicitors for the publisher of *The Australian*, Nationwide News (the firm Kelly Hazell Quill), have indicated that:-
- (i) while Nationwide News does not object to the provision of the earlier Affidavit to the Accused as part of the hand-up brief, it does object to publication of

the contents of paragraphs 26 to 31 of the earlier Affidavit as the conversations referred to were confidential in nature;


(ii) Nationwide News takes issue over the accuracy of parts of my version of the conversations as set out in those paragraphs.

(f) By reason of the above matters, I am of the opinion that publication of paragraphs 26 to 31 of the earlier Affidavit is likely to be detrimental to the AFP's ability to obtain co-operation and/or assistance from Nationwide News, and quite possibly other media organisations, in the future. In the event of the publication of such material, media organisations such as Nationwide News could well become reluctant to openly engage with the AFP in the future. As this case demonstrates, it is important, for national security reasons, that in certain circumstances the media engage with the AFP and vice versa.

SWORN by the said deponent)
at Canberra in the Australian Capital)
Territory on the 29 day of September 2011)



Before me:


ERNOLO ERMANNO CASAGRANDE
SOLICITOR, ACT.